

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FPP SANDBOX, LLC, a Delaware Limited
Liability Company;

Plaintiff,

vs.

THE REDSTONE COMMUNICATIONS
GROUP, INC., a Nebraska Corporation;

Defendant.

8:18CV106

ORDER

This case is currently before the court on Plaintiff's "Motion to Amend Complaint."
([Filing No. 9](#)).

Plaintiff's original complaint was filed on March 6, 2018. ([Filing No. 1](#)). In response, Defendant timely filed a motion to dismiss pursuant to [Fed. R. Civ. P. 12\(b\)\(6\)](#). ([Filing No. 7](#)). Twenty days after Defendant filed its motion to dismiss, Plaintiff filed the instant motion to amend its complaint. ([Filing No. 9](#)). For the following reason, Plaintiff's motion will be granted.

ANALYSIS

A party may amend its pleading once as a matter of course within:

- (A) 21 days after serving it, or
- (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

[Fed. R. Civ. P. 15\(a\)\(1\)](#). If filed in accordance with Rule 15(a)(1), a plaintiff's right to amend once is absolute. See generally [61A Am. Jur. 2d Pleading § 704 \(2018\)](#). Here, Plaintiff's motion to amend its complaint was filed within 21 days of Defendant's motion

to dismiss. And no previous amendment to Plaintiff's original complaint has been filed. Thus, under the federal rules, Plaintiff was entitled to file an amended complaint when its motion to amend was filed.¹ The court would abuse its discretion if it denied this motion. [Id.](#)

Finally, Defendant argues that amendment is futile, claiming that the proposed amended complaint suffers from the same fatal defects as the original complaint, and should therefore be disallowed. This argument is unavailing. Even if Defendant is correct—which the undersigned magistrate judge will not here address—the doctrine of futility does not apply when a complaint is amended as a matter of course. [See, e.g., Galustian v. Peter, 591 F.3d 724, 730 \(4th Cir. 2010\).](#) Accordingly,

IT IS ORDERED that:

- 1) Plaintiff's motion to amend ([Filing No. 9](#)) is granted.
- 2) On or before May 16, 2018, Plaintiff shall file the proposed amended complaint, a copy of which is attached to its motion to amend.

Dated this 9th day of May, 2018.

BY THE COURT:

[s/ Cheryl R. Zwart](#)
United States Magistrate Judge

¹ The instant motion was procedurally unnecessary. Plaintiff could have simply filed an amended complaint without informing the court of its intent to do so. In instances where Rule 15(a)(1) applies, no leave of court is necessary in order to amend.